



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 29, 1994

Mr. Jack W. Garrison
Executive Director
Texas Department of Licensing and Regulation
P.O. Box 12157
Austin, Texas 78711

OR94-515

Dear Mr. Garrison:

On behalf of the Texas Department of Licensing and Regulation, you ask whether certain information submitted to the department in connection with an application for licensing under the Staff Leasing Services Act, V.T.C.S. art. 9104, is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 25429.

You have received a request under the Texas Open Records Act for "all information in possession of the Department of Licensing and Regulation concerning applications for staff leasing licenses."¹

Article 9104, V.T.C.S., regulates "staff leasing services," defined generally as "an arrangement by which employees of a licensee are assigned to work at a client company and in which employment responsibilities are in fact shared by the licensee and the client company" V.T.C.S. art. 9104, § 1(11). It requires the licensing of companies that offer staff leasing services. In addition, "controlling persons"² affiliated with the licensee must meet statutory qualifications. *Id.* §§ 3(c); 4(a). The department must

¹The requestor states that he does not seek financial statements or tax returns submitted to demonstrate the applicant's net worth, which are confidential, V.T.C.S. art. 9104, § 4(j), or fingerprint cards submitted by applicants and controlling persons "for processing through appropriate local, state, and federal law enforcement agencies," *id.* § 4(c)(1).

²"Controlling person" includes persons who have certain ownership or management interests in a business that seeks to offer staff leasing services. V.T.C.S. art. 9104, § 1(5).

conduct a "thorough background investigation of each individual applicant and each controlling person of each applicant," *id.* § 4(c), and applicants must submit various items of information about the business and its controlling persons. *Id.* § 4. You have sent us representative samples³ of documents from licensing files, consisting of a completed application for a staff leasing services license and accompanying personal information forms filled out by controlling persons.

You ask whether you may withhold the results of a background investigation pursuant to section 552.101 of the Government Code, which provides that information is excepted from required public disclosure "if it is information considered to be confidential by law, either constitutional, statutory, or by judicial decision." We cannot determine in the abstract whether section 552.101 permits you to withhold all information gathered in the background investigation.⁴ We can only look at the documents you have submitted and determine whether or not section 552.101 permits you to withhold them.

Section 552.101 protects information if its release would cause an invasion of privacy under the test articulated by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The privacy interest that may be relevant to the application files is the common-law right of privacy. See Open Records Decision No. 215 (1978) (discussing privacy interests in physicians' licensing files). Under the *Industrial Foundation* case, information may be withheld on common-law privacy grounds only if it is highly intimate or embarrassing and is of no legitimate concern to the public.

You suggest that a right of privacy protects the names, home addresses, and home telephone numbers of persons listed as references for controlling persons on the personal information forms they filled out. This office has determined that the doctrine of common-law privacy does not protect the names and addresses of persons requested to provide references in an application for licensing by a state agency. See Attorney General

³In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499, 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office

⁴You state that you are concerned because the department is "regularly exchanging information with the FBI, the U.S. Department of Labor and the IRS," although with the exception of letters from the IRS you have not submitted any information received from these agencies. When you receive a request for information provided to you by a federal agency, you must submit it to us with the requested documents and an explanation of your reasons why the information is confidential so that we can determine whether or not it is excepted from disclosure under the Open Records Act. See Gov't Code §§ 552.301 - .307; see also Open Records Decision No. 561 (1990) (confidential information transferred by federal agency, specifically, Department of Justice, to Texas governmental body).

Opinion H-242 (1974); Open Records Decision Nos. 215 (1978); 157 (1977);⁵ *see also* Open Records Decision Nos. 554 (1990) (holding that names and addresses of employees of a private company are not protected by right of privacy); 169 (1977) (holding that home addresses of public employees are ordinarily not protected by right of privacy). Thus, you may not withhold the names, addresses, and telephone numbers of persons listed as references on the personal information forms.

You do not suggest that a right of privacy would protect any other information that you have sent us. This office may raise section 552.101 of the Government Code on behalf of a governmental body. Open Records Decision Nos. 455 (1987); 325 (1982). An issue of common-law privacy may be raised by a section of the personal information form that requires each controlling person to give a "yes" or "no" answer to several questions. We will consider whether an affirmative answer to any of these questions is protected by a common-law right of privacy.

The applicant must state whether he has ever been convicted of a felony or misdemeanor, other than a minor traffic violation, or whether any such charge is pending. This office has determined that the fact that a person has been arrested for a felony offense is not protected by common-law privacy, even if the individual is not prosecuted. Open Records Decision No. 408 (1984) at 10; *see also* Open Records Decision No. 474 (1987) (allegations by a state regulatory agency that licensee engaged in illegal or improper activities is of legitimate public interest). Accordingly, the answer to this question on the personal information form is not protected by a common-law right of privacy, and must be disclosed to the requestor.

The individual must answer the following questions about his past and present financial standing:

Whether he had ever filed a petition in bankruptcy or had ever had a judgment entered against him;

whether a staff leasing company in which he owned a percentage had ever filed a petition in bankruptcy or had ever had a judgment entered against it;

whether he had ever had a lien placed on his property for failure to pay taxes;

⁵These open records decisions also hold that the following information usually included in a licensing application is open to the public: licensee's name, address, date of birth, age, sex, marital statute, license number, education information, prior and present employment, and whether the licensee had been arrested for a felony or a misdemeanor within the past year. They also state that social security numbers from applications for licensing are open to the public. However, a change in federal law has affected the availability of social security numbers under the Open Records Act under some circumstances. *See* Open Records Decision No. 622 (1994).

whether he is in arrears on any taxes owed the State of Texas;
and

whether he is in arrears on a guaranteed student loan.

Financial information concerning an individual is in some cases protected by a common-law right of privacy. *See* Open Records Decision Nos. 545 (1990); 523 (1989). A previous opinion of this office stated that "all financial information relating to an individual--including sources of income, salary, mortgage payments, assets, medical and utility bills, social security and veterans benefits, retirement and state assistance benefits, and credit history--ordinarily satisfies the first requirement of common[-]law privacy, in that it constitutes highly intimate or embarrassing facts about the individual, such that its public disclosure would be highly objectionable to a person of ordinary sensibilities." Open Records Decision No. 373 (1983) at 3. The case before us does not involve detailed financial information, but only "yes" or "no" answers to questions about financial status. Moreover, the first three inquiries above concern actions before a court, which would be recorded in the court's records. Accordingly, the answers to the questions summarized as the first three questions above are not protected by a common-law right of privacy.

In determining whether there is a legitimate public interest in financial information about an individual, this office has said that "the basic facts regarding a particular financial transaction between the individual and the public body" are matters of public interest, and information pertaining to them is not protected by section 552.101. Open Records Decision No. 590 (1991) at 3 (and opinions cited therein). Accordingly, the answers to the questions about guaranteed student loans and about taxes owed to the state are open to the public, because they relate to a transaction between the individual and a governmental body. *See* Open Records Decision No. 480 (1987) (common-law right of privacy does not protect the names of students who had defaulted on loans issued by the Texas Guaranteed Student Loan Corporation). Thus, the answers to these questions must be made available to the requestor.

Finally, controlling persons must answer to the following questions about their experience with the regulation of a staff leasing company by another state:

Whether he had ever been refused a license or license renewal
for a staff leasing company in another state; and

whether he or a staff leasing company in which he had an
ownership interest had ever been disciplined by another state
regulatory agency.

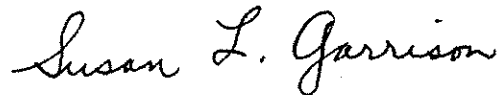
We need not determine whether this information is "highly intimate or embarrassing," because we believe there is a legitimate public interest in knowing whether a controlling person of an applicant for a staff leasing license in Texas has had difficulty complying with the law regulating staff leasing companies in other states. Therefore, the answers to these questions, as well as the other questions on the personal information form, must be made available to the requestor.

The applications contain some information that is excepted from disclosure pursuant to section 552.101 as information deemed confidential by statute. Some social security numbers are excepted from disclosure pursuant to section 552.101 of the Government Code in connection with a federal statute. A provision of the Social Security Act adopted in 1990 states that social security numbers obtained or maintained by authorized persons pursuant to any provision of law, enacted on or after October 1, 1990, shall be confidential. 42 U.S.C. § 405(c)(2)(C)(vii); *see* Open Records Decision No. 622 (1994). Article 9104, V.T.C.S., was adopted in 1993. *See* Acts 1993, 73d Leg., ch. 994. Thus, any social security numbers obtained or maintained pursuant to that law are confidential.⁶

We believe that letters from the Internal Revenue Service attached to the applications are excepted from disclosure by section 552.101 of the Government Code in connection with section 6103(b)(2)(A) of title 26 of the United States Code. This provision of the Internal Revenue Code, which makes "return information" confidential, applies to any information gathered by the Internal Revenue Service regarding a taxpayer's liability under title 26 of the United States Code. *Mallas v. Kolak*, 721 F. Supp. 748 (M.D.N.C. 1989); *see* Open Records Decision No. 600 (1992). As we have already stated, the remaining information is available to the public.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with an informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Susan L. Garrison
Assistant Attorney General
Open Government Section

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⁶We need not address the authority of the department to obtain social security numbers under article 9104, V.T.C.S., in order to determine the Open Records Act issue before us. We moreover note that the personal information forms indicate that provision of the social security number is voluntary.

Ref.: ID# 25429

Enclosures: Submitted documents

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